Nos. 10547 and 10548

In the United States Circuit Court of Appeals for the Ninth Circuit

WILLIAM R. WALLACE, JR., PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

INA CLAIRE WALLACE, PETITIONER

v.

COMMISSIONER OF INTERNAL REVENUE, RESPONDENT

ON PETITIONS FOR REVIEW OF THE DECISIONS OF THE TAX COURT OF THE UNITED STATES

BRIEF FOR THE RESPONDENT

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OPINION BELOW

The memorandum opinion of the Tax Court (R. 25–32) is not reported.

JURISDICTION

These petitions for review (R. 34–38) involve federal income taxes of William R. Wallace, Jr., and Ina Claire Wallace, his wife, for the taxable year 1939.

On December 17, 1941, the Commissioner of Internal Revenue mailed to the taxpayers notices of deficiency in the amounts of $558.41 and $503.41, respectively. (R. 7–11, 18–22.) Within ninety days thereafter and on March 11, 1942, the taxpayers filed petitions with the Board of Tax Appeals (now the Tax Court) for a redetermination of the deficiencies under the provisions of Section 272 of the Internal Revenue Code. (R. 2–11, 13–22.) The decisions of the Tax Court sustaining the deficiencies were entered May 7, 1943. (R. 32–33.) The cases are brought to this Court by petitions for review filed August 4, 1943 (R. 34–38), pursuant to the provisions of Sections 1141 and 1142 of the Internal Revenue Code.[1]

QUESTION PRESENTED

Whether taxpayers, a husband and wife domiciled in San Francisco, California, are entitled under Section 23 (a) (1) of the Internal Revenue Code to deduct as traveling expenses "while away from home" amounts expended by the wife for food, rent and similar living expenses at Hollywood, California, while she was employed there during 1939 as a motion picture actress.

STATUTE AND REGULATIONS INVOLVED

These appear in the Appendix, *infra,* pp. 22–23.

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[1] The income tax returns were filed on the community property basis. (R. 28, 67–100.) The separate proceedings were consolidated for hearing below (R. 25), and have also been consolidated here for hearing upon a single printed record (R. 129–132).

STATEMENT

The facts as found by the Tax Court (R. 25–28, 31) may be summarized as follows:

Taxpayer, Ina Claire Wallace, known professionally by her maiden name of Ina Claire, is a well known stage and screen actress. From about August, 1932 to April, 1936 she lived in Connecticut, and from April, 1936 to November, 1938 she lived at the Pierre Hotel in New York City and also leased an apartment in that city. Throughout these years most of her working time was devoted to the legitimate stage. (R. 26–27, 114–119.)

In November, 1938 she entered into a contract with Loew's, Inc., which provided for her services as a film actress for 34 weeks over a 40-weeks period beginning November 22, 1938, and ending September 30, 1939, at a salary of $2,000 per week. The contract required her to remain in the vicinity of Hollywood, California, throughout the 40-week period so as to be available for duty at any and all times. (R. 26, 50, 61, 112.) During 1939 and while in Hollywood to carry out this employment, she lived at the Beverly Wilshire Hotel for a few weeks and then rented a house for a period of three months. At the expiration of that period she rented another house which she occupied until September 15, 1939. (R. 28, 110, 119, 124.)

During the period of her employment by Loew's, Inc., and on March 16, 1939, Ina Claire married the taxpayer, William R. Wallace, Jr., an attorney who lived in San Francisco, California, and who had been practicing law there since 1927. They were married in Salt Lake City, Utah, and after the honeymoon

returned to the home of Mr. Wallace in San Francisco, where they stayed for a month or six weeks. They discussed the matter of their future residence at that time and agreed to make their permanent home in San Francisco. About May 1, 1939, Mrs. Wallace returned to Hollywood to resume her work at the studio, and she remained in Hollywood until the termination of her contract with Loew's Inc. (R. 26–27, 108, 122.)

Upon completing her employment in Hollywood, and about September 15, 1939, Ina Claire Wallace joined her husband in San Francisco. She remained at his home for the balance of the taxable year and during that time, with his advice and assistance, reviewed many plays submitted for her approval. She appeared in a play during the summer of the following year, and in another play in New York City during the spring of 1941. She then returned to San Francisco and, except for occasional trips, has since lived there. (R. 27–28, 106–107, 113.)

During the period that she was employed in Hollywood, namely, from November, 1938 through September, 1939, Ina Claire Wallace was not traveling in pursuit of a trade or business. Throughout this period Hollywood was her place of business and her "home" within the meaning of the taxing statute, although after her marriage on March 16, 1939 her domicile became that of her husband. (R. 31.)

Taxpayers filed separate income tax returns for the year 1939 on the community property basis. Each reported one-half of their combined community income and claimed deductions of one-half of their

combined community expenses for the period after March 16, 1939, the date of marriage. (R. 28, 87–100.) The expenses so claimed in each return included one-half of the "Business expenses" of Ina Claire Wallace totaling $15,462.31, of which $4,630.33 represented "Household expenses in Los Angeles." (R. 91, 97.) These household expenses consisted of rent, food and similar living expenses of Ina Claire Wallace after her marriage but while she was still employed and staying at Hollywood. (R. 28.)

The Commissioner disallowed these household living expenses as not being within the deductions allowed by Section 23 (a) (1) of the Internal Revenue Code. (R. 9–10, 20–21, 28.) The Tax Court affirmed the Commissioner's determination. (R. 32–33.)

SUMMARY OF ARGUMENT

Deductions for personal, living or family expenses are expressly prohibited by Section 24 (a) (1) of the Internal Revenue Code. Amounts spent for meals, lodging and the like are deductible as ordinary and necessary business expenses under Section 23 (a) (1) only if they are traveling expenses "while away from home" in the pursuit of a trade or business. It is settled that the place where a taxpayer has his "home" as that term is used in the taxing statute, is a question of fact depending upon where he is regularly or principally employed or carries on his business during the taxable year. The Tax Court found that, during the entire period for which the living expenses in question were incurred, taxpayer Ina Claire Wallace was engaged in carrying on the business of motion picture

actress at Hollywood, California, and that therefore she was not traveling away from her statutory home during that period. Since the terms of her employment contract as well as the other evidence amply support this finding, it is conclusive on appeal.

The Tax Court properly held that Section 23 (a) (1) is not concerned with legal residence or marital domicile. It correctly sustained the Commissioner's determination that, for tax purposes, the statutory home of taxpayer Ina Claire Wallace was Hollywood, where she was engaged in carrying on her business and earning her livelihood even though the marital domicile and her husband's place of business were elsewhere. The plain purpose of the provision of Section 23 (a) (1) permitting the deduction of expenditures for meals and lodging while traveling away from home in the pursuit of a trade or business, read in conjunction with Section 24 (a) (1) prohibiting any deduction for personal or living expenses, is to extend relief to a taxpayer who continues to maintain a home where he is regularly employed or engaged in business but is required to travel away from that home temporarily on business.

ARGUMENT

The tax court correctly sustained the Commissioner's determination that taxpayers were not entitled under Section 23 (a) (1) of the Internal Revenue Code to deduct as ordinary and necessary business expenses the amounts expended by taxpayer Ina Claire Wallace in 1939 for living at Hollywood, California, where she was carrying on her business, even though her domicile was elsewhere

The taxpayers, husband and wife, seek a review of the decision of the Tax Court which sustained the

Commissioner's disallowance of deductions consisting of the living expenses of the wife, Ina Claire Wallace, while she was employed in Hollywood in 1939 as a film actress and while her domicile was that of her husband elsewhere. Taxpayers filed separate income tax returns on the community property basis and each deducted one-half of that portion of the wife's Hollywood living expenses which was incurred after the marriage on March 16, 1939.

Taxpayers' claim must be sustained, if at all, under Section 23 (a) (1) of the Internal Revenue Code, relating to deductions for ordinary and necessary business expenses (Appendix, *infra*). That section provides for the allowance of "traveling expenses (including the entire amount expended for meals and lodging) *while away from home* in the pursuit of a trade or business." (Italics supplied.) This provision must be applied in conjunction with Section 24 (a), which specifies that "in computing net income no deduction shall in any case be allowed in respect of (1) personal, living, or family expenses" (Appendix, *infra*).

The Tax Court, affirming the Commissioner's determination, held substantially that determinative of whether taxpayers are entitled to the deductions claimed is the meaning of the term "home" in Section 23 (a) (1), and that as used in that section "home" is where the taxpayer has his principal place of business or employment. This holding is in conformity with a long line of decisions. *Coburn* v. *Commissioner* (C. C. A. 2d), decided November 29,

1943 (1943 C. C. H., par. 9652); *Duncan* v. *Commissioner,* 17 B. T. A. 1088, affirmed, *per curiam,* 47 F. 2d 1082 (C. C. A. 2d); *Priddy* v. *Commissioner,* 43 B. T. A. 18, petition for review dismissed July 23, 1941 (C. C. A. 5th); *Tracy* v. *Commissioner,* 39 B. T. A. 578; *Lindsay* v. *Commissioner,* 34 B. T. A. 840; *Peters* v. *Commissioner,* 19 B. T. A. 901; *Bixler* v. *Commissioner,* 5 B. T. A. 1181. In the recent case of *Coburn* v. *Commissioner, supra,* the facts of which are discussed below, the Circuit Court of Appeals for the Second Circuit held that a taxpayer's home, as that term is used in Section 23 (a) (1), is limited to "the place where he is regularly employed or customarily carries on business during the taxable year".

In *Tracy* v. *Commissioner, supra,* the taxpayer, a stage and screen actor, was domiciled and had his permanent family home in Pennsylvania, where he maintained his mother and a niece. This home was his permanent address where important mail was sent and where he kept many of his personal effects. Since 1919 he had been engaged in the theatrical business, either as an actor on the legitimate stage or in motion pictures. During 1934, the taxable year involved, the taxpayer was employed in Los Angeles making motion pictures, and while there resided in hotels and furnished apartments. He claimed deduction of his living expenses in Los Angeles on the ground that while in California in pursuit of his profession he was traveling away from his home. It was held that the taxpayer's home during the taxable year was California, and that the expenses were personal living expenses and not deductible.

In *Priddy* v. *Commissioner, supra,* the taxpayer maintained a permanent home for his family at Wichita Falls, Texas, but his business required him to be away from there about 75 percent of the time and to maintain living quarters 245 miles away in Tyler, Texas, where he spent 30 to 40 percent of his time. It was held that the taxpayer could not deduct his living expenses at Tyler because that was his "principal" place of business and therefore his statutory home.

Lindsay v. *Commissioner, supra,* involved the Washington hotel expenses of a Congressman while attending sessions of Congress and his railroad fares to and from New York, where he maintained a residence, to confer with his constituents. These expenses were held not deductible because Washington, the seat of the Government, was the taxpayer's "home" within the meaning of the statute.

In *Duncan* v. *Commissioner, supra,* the court held that a salesman who traveled on a roving commission and who maintained his living quarters wherever he happened to be had no usual place of business and statutory home, and therefore could not deduct the year's expenses for meals and lodging.

The construction of "home" upon which these decisions rest is in harmony with the administrative interpretation of the applicable statute here involved, as well as of like prior statutes,[2] beginning with the

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[2] Sections 214 (a) (1) and 215 (a) (1) of the Revenue Acts of 1921, 1924 and 1926; Sections 23 (a) and 24 (a) (1) of the Revenue Acts of 1928, 1932, 1934, 1936 and 1938; Section 121 (a) (1) (A) of the Revenue Act of 1942.

Revenue Act of 1921. O. D. 905, 4 Cum. Bull. 212 (1921); O. D. 1021, 5 Cum. Bull. 174 (1921); I. T. 1264, I–1 Cum. Bull. 122 (1922); I. T. 1355, I–1 Cum. Bull. 194 (1922); I. T. 3314, 1939–2 Cum. Bull. 152. Under accepted principles, the re-enactment of like sections in the successive Revenue Acts since 1921 is an implied legislative recognition and approval of the administrative interpretation. *Helvering* v. *Winmill,* 305 U. S. 79; *National Lead Co.* v. *United States,* 252 U. S. 140; *Hecht* v. *Malley,* 265 U. S. 144.[3]

The place where a taxpayer is regularly employed and therefore has his statutory home during the taxable year is, of course, a question of fact in each case. *Coburn* v. *Commissioner, supra; Priddy* v. *Commissioner, supra; Duncan* v. *Commissioner, supra.* The evidence clearly supports the Tax Court's finding that during the period in question the regular and principal place of employment of Ina Claire Wallace was Hollywood. Prior to November, 1938 she had been both a stage and screen actress, and since 1929 had lived successively in California, Connecticut and New York (R. 26, 114–119). The contract with Loew's, Inc. (R. 46–

[3] The established rule that commuters' fares are not business expenses deductible under Section 23 (a) (1) likewise rests upon the principle that the taxpayer's statutory home is his regular place of business or employment and that expenses of traveling to and from such place are not incurred "while away from home". Section 19.23 (a)–2 of Treasury Regulations 103; Article 23 (a)–2 of Treasury Regulations 101, 94, 86; Article 122 of Treasury Regulations 77 and 74; Article 102 of Treasury Regulations 69 and 65; Article 101 (a) of Treasury Regulations 62; *Lindsay* v. *Commissioner, supra; Priddy* v. *Commissioner; supra; Bixler* v. *Commissioner, supra.*

78), pursuant to which she came to Hollywood in November, 1938, ran for 40 weeks and expired September 30, 1939 (R. 50, 120), and required her to be available at all times at Los Angeles to perform services as a motion picture actress (R. 26, 61, 112). She was obliged to act in up to five pictures a year (R. 72), and was paid by the week (R. 51, 121). The contract granted to Loew's separate options to extend the term of her employment at increasing rates of compensation for four consecutive "picture years" (October 1 to September 30) beginning October 1, 1939, subject to a right of election in Ina Claire Wallace at the end of any picture year to take an "intervening stage year" as a "lay-off" from her film work; and in case she elected to take an intervening stage year and did not find a stage role within 90 days Loew's had the right to recall her services as a film actress. (Pet. Ex. 1, pars. 16, 23, 25, 27, 30; at R. 61–62, 66–68, 69–70, 72, 73.) To carry out this employment she gave up her New York hotel accommodations, did not renew the lease of her New York apartment, and came to Beverly Hills to live. (R. 114–117, 120-121.) After staying at a hotel for a few weeks, she rented a house for three months, and then rented another house for the period March 15, 1939 to September 15, 1939. (R. 28, 110, 119, 124.) At the expiration of this lease, which coincided with the termination of her services under the contract with Loew's, she did not return to her New York activities but went to San Francisco to live and remained there for the balance of the taxable year. (R. 27, 106–107, 113.) At the hearing below it was

stipulated that the deductions in question consisted of the personal living expenses of Ina Claire Wallace incurred at Beverly Hills during the period from March 16, 1939 (the date of marriage), to September 15, 1939, and that during all of such period she was employed in Hollywood by Loew's, Inc. (R. 112–113.) In the income tax returns these personal living expenses were labeled "Household expenses in Los Angeles." (R. 91, 97.) On the basis of these facts the Tax Court found (R. 31) that Hollywood was the place of business of Ina Claire Wallace and therefore her statutory home during the period the living expenses in question were incurred, and that accordingly she was not traveling in pursuit of a trade or business during that time. This finding is amply supported by the record, and it is elementary that a finding of fact by the Tax Court based upon substantial evidence will not be disturbed on appeal. *Wilmington Co.* v. *Commissioner,* 316 U. S. 164; *Helvering* v. *Rankin,* 295 U. S. 123; *Phillips* v. *Commissioner,* 283 U. S. 589; *Botany Mills* v. *United States,* 278 U. S. 282.

It is apparent that the facts here are materially different from those in *Coburn* v. *Commissioner, supra,* and that the decision below is not in conflict with the opinion in that case. The court there affirmed the principle that home for tax purposes is "the place where the taxpayer is regularly employed or customarily carries on business during the taxable year". On the particular facts there presented, however, the court found that the taxpayer did not cease to be regularly employed in New York by going to Cali-

fornia to fulfil a short-term contract with the expectation of returning to New York within a few weeks. The court specifically pointed out that the taxpayer had maintained an apartment in New York since 1900, had all his life followed the career of actor-manager on the legitimate stage in New York, and had never before acted in pictures; that he went to California in 1937 to fulfil a short-term contract with the expectation of shortly returning to New York and that "by chance he got five short-term contracts" which kept him over until 1938; that he continued to maintain his New York apartment throughout the taxable year and in between his limited California engagements returned to New York for several months during the year to resume his regular work there; and that when these engagements were over he immediately returned to New York and continued his activities there for the remainder of the year. Under these circumstances, the court held that "each of his limited engagements in California was only a temporary diversion from his life-long career on the legitimate stage".

In contrast with the facts in the *Coburn* case, the record here shows that taxpayer Ina Claire Wallace was exclusively a film actress during the entire period for which the living expenses in question were incurred, and that her employment in Hollywood was not a "temporary diversion" from a career and an established home elsewhere. She had been a screen actress and had resided in California before, gave up her New York apartment after coming to Hollywood, and did not return to New York at any time during

the taxable year. The contract pursuant to which she came to Hollywood was not a "short-term" engagement as in the *Coburn* case but was for practically an entire picture year; it required her continuous presence in Los Angeles for 40 weeks and provided for weekly compensation. She obviously did not come to Hollywood with the expectation of shortly returning to New York and by chance receive additional short-term contracts, as did the taxpayer in the *Coburn* case, but made her business during the period in question exclusively that of film acting. The options granted to Loew's to extend the term of her employment for successive years are significant as showing an intention to make motion picture acting in Holywood her primary occupation during 1939. In the light of this record it is submitted that the finding of the Tax Court that Hollywood was her regular place of business during the taxable year is not only supported by substantial evidence, but is the only finding which could reasonably have been reached.

In an attempt to establish that Ina Claire Wallace had her place of business and therefore her statutory home at Mr. Wallace's residence in San Francisco, taxpayers contend (Br. 11–13) that during 1939 she reviewed many plays and received mail and telephone messages there. Apart from the question whether her husband's residence became her place of business by virtue of such activities, the argument fails to take account of the important fact, as found by the Tax Court (R. 27–28), that these activities occurred *after* the termination of her employment and residence in

Hollywood. The living expenses claimed as a deduction are for the preceding portion of 1939 during her employment in Hollywood (R. 25–26), and these prior Hollywood living expenses manifestly could not have been incurred in traveling away from a San Francisco place of business and "home" when that home had not yet been acquired. In permitting deductions for traveling expenses "while away from home" the statute patently has reference to an existing home. The conclusion seems inescapable that only Hollywood could have been the regular place of business and statutory home of Ina Claire Wallace during the entire period from November, 1938 to September, 1939 that her contract required her presence there, since she gave up her New York activities and apartment, carried on her business and maintained her living quarters in Hollywood throughout this period, and did not go to San Francisco to live until her Hollywood employment was over.[4]

While it is true that by virtue of her marriage, during the course of her employment in Hollywood, Ina Claire Wallace acquired the domicile of her husband, she did not thereby acquire a new home in the tax sense. Taxpayers' suggestion (Br. 7–10, 29) that "home" as used in Section 23 (a) (1) is synonymous with legal residence or domicile finds no support in the statute, the decisions, or the administrative interpreta-

[4] Despite taxpayers' contention that Hollywood never became the statutory home of Ina Claire Wallace, her Hollywood living expenses for that portion of 1939 preceding the marriage were not claimed as a deduction. Taxpayers assert that the failure to do so was a mistake. (R. 86.)

tions. Moreover, since under the authorities the maintenance of an actual residence at a place other than the taxpayers' regular place of business would not warrant the deduction of living expenses at such place of business, it would seem abundantly clear that the establishment or maintenance of a legal residence elsewhere cannot warrant such deduction. The plain purpose of the provision in Section 23 (a) (1) permitting the deduction of expenditures for meals and lodging while traveling "away from home" in pursuit of a trade or business, read in conjunction with Section 24 (a) (1) prohibiting any deduction in any case for personal or living expenses, is to extend relief to a taxpayer who maintains a home where he regularly carries on his business or employment and is required to travel away from that home on business without reimbursement for the cost of traveling.[5] There is no basis in the language of the statute or elsewhere for concluding that the legislative intent was to place a premium on the establishment or maintenance of a legal residence or domicile at a place other than where the taxpayer is regularly employed, or of another actual residence, by sanctioning the deduction of what are in fact personal living expenses under the guise of traveling expenses. To so conclude would permit easy

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[5] Whether Ina Claire Wallace was required to travel away from Los Angeles on business does not appear. The contract with Loew's, Inc., provided, however, that if her services were needed "on location", i. e., away from Los Angeles, all her necessary meals, lodging and transportation would be furnished by Loew's (R. 60–61), and the deductions here claimed consist entirely of her household living expenses in Hollywood.

circumvention of the statute and would render meaningless the plain language of Section 24 (a) (1) inhibiting deductions for "personal, living, or family expenses."[6]

In contending (Br. 9–11) that under the meaning of home adopted by the Tax Court no taxpayer could ever be away from his home on business because his home will always be where he is "at that moment" engaged in business, taxpayers misconceive the applicable principle upon which the decisions rest. This principle is that home for tax purposes is where the taxpayer is regularly or principally engaged in business during the taxable year, and that he is entitled to deduct his living expenses only while traveling away from that home on business. Since the place where a taxpayer is regularly engaged in business is necessarily a question of fact in each case, the application of this principle to different sets of fact

[6] The construction urged by taxpayers also appears impracticable, since domicile ordinarily has reference to the states or political subdivisions rather than to physical places within their boundaries (cf. Restatement of the Conflict of Laws, Sections 9, 11, 28). If "home" for tax purposes meant "domicile", traveling expenses incurred anywhere within the state of domicile would not be allowable under any circumstances while, on the other hand, a taxpayer employed at a point in state A within easy commuting distance of his living quarters in state B would be entitled to deduct all his fares and living expenses as traveling expenses "while away from home", results manifestly not intended by Sections 23 (a) (1) and 24 (a) (1). Thus, even on taxpayers' assumption that home means domicile, it might well be contended that the living expenses of Ina Claire Wallace here involved were not incurred away from home because California was both her domicile and where the expenses were incurred.

will, of course, sometimes be difficult and may lead to different results. This does not mean, however, that there has been evolved a conflicting "*Griesemer* rule" and "*Bixler* rule", as taxpayers suggest. (Br. 13, 20.) Thus in *Cabot* v. *Commissioner,* unreported B. T. A. decision of March 29, 1939, to which taxpayers refer (Br. 17–18) as having been decided under the "*Griesemer* rule", the Board of Tax Appeals relied upon the *Tracy* case, which taxpayers have cited (Br. 22) as illustrative of the "*Bixler* rule". And in the *Duncan* case, *supra,* where the court affirmed the holding of the Board denying deduction of living expenses to a traveling salesman, the Board in its opinion relied upon and quoted from the opinions in both the *Bixler* and the *Griesemer* cases. In any event, while we believe that the Board decisions and the Bureau of Internal Revenue rulings cited by taxpayers as applications of what they term the "*Griesemer* rule" are distinguishable on their own peculiar facts,[7] we do not believe any useful purpose would be served in discussing the facts in each case and ruling. It need only be pointed out that in none of them is there any intimation that "home" for tax purposes is synonymous with legal residence or domicile, that the Circuit Court of Appeals in the *Coburn* case recently affirmed the principle that it means the taxpayers' place of regular em-

[7] In the decisions cited it appears that the taxpayer continued to maintain permanent living quarters at a regular place of business or employment while working temporarily at another place, which was not the case here.

ployment or business, and that the record here fully supports the finding below.

Nor do the community property laws of California upon which taxpayers rely (Br. 27–32) have any relevancy to a determination of what expenditures are properly allowable as traveling expenses under Section 23 (a) (1) of the Internal Revenue Code. As the Tax Court pointed out (R. 31–32), we are not here concerned with what constitutes community income or community expenses; the Commissioner has raised no question as to the marital domicile of taxpayers, or their right to treat combined earnings after marriage as community income and to deduct in computing community income any amounts properly allowable under the revenue laws. The only question here presented is whether living expenses of the wife claimed by taxpayers in equal shares as a deduction from their community income are properly allowable (see *Herder* v. *Helvering,* 106 F. 2d 153 (App. D. C.), certiorari denied, 308 U. S. 617; *Stewart* v. *Commissioner,* 95 F. 2d 821 (C. C. A. 5th)), and the determination of that question depends solely on where the wife maintained her "home" as that term is used in the federal taxing statute. While the earnings of taxpayers are concededly community property, they are separate taxpayers and file separate returns. It cannot seriously be contended that a wife engaged in earning her own livelihood may not, for tax purposes at least, have a home separate from that of her husband, and that consequently if she engages in business or accepts regular employment in another

city all her living expenses there become deductible as traveling expenses. Furthermore, the revenue laws are to be construed in the light of their general purpose to establish a nationwide scheme of taxation uniform in its application, and hence their provisions are not to be taken as subject to state control or limitation unless the language or necessary implication of the section involved makes its application depend on state law. *Commissioner* v. *Greene,* 119 F. 2d 383 (C. C. A. 9th), certiorari denied, 314 U. S. 641; *United States* v. *Pelzer,* 312 U. S. 399. There is nothing in Section 23 (a) (1) or 24 (a) (1) or in any other portion of the Act to warrant any inference that, for purposes of ascertaining what are allowable deductions for traveling expenses away from home, the meaning of "home" is to depend upon local law definition, upon the *situs* of the marital domicile, or upon whether earnings of a husband and wife are community property. On the contrary, in the light of the familiar principle that deductions in general are a matter of legislative grace (*White* v. *United States,* 305 U. S. 281; *New Colonial Co.* v. *Helvering* 292 U. S. 435), and particularly in the light of the clear expression of Congressional intent in Section 24 (a) (1) to prohibit deductions "in any case" for personal, living, or family expenses, it is submitted that the Tax Court could have followed no other course than to adhere to the established rule that home for tax purposes is where the taxpayer is regularly employed or engaged in business during the taxable year.

CONCLUSION

The decision of the Tax Court is correct and should be affirmed.

Respectfully submitted.

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DECEMBER, 1943.

Internal Revenue Code:

SEC. 23. DEDUCTIONS FROM GROSS INCOME.

In computing net income there shall be allowed as deductions:

(a) *Expenses.*—

(1) *In General.*—All the ordinary and necessary expenses paid or incurred during the taxable year in carrying on any trade or business, including a reasonable allowance for salaries or other compensation for personal services actually rendered; traveling expenses (including the entire amount expended for meals and lodging) while away from home in the pursuit of a trade or business; and rentals or other payments required to be made as a condition to the continued use or possession, for purposes of the trade or business, of property to which the taxpayer has not taken or is not taking title or in which he has no equity.

* * * * *

(26 U. S. C. 1940 ed., Sec. 23)

SEC. 24. ITEMS NOT DEDUCTIBLE.

(a) *General Rule.*—In computing net income no deduction shall in any case be allowed in respect of—

(1) Personal, living, or family expenses;

* * * * *

(26 U. S. C. 1940 ed., Sec. 24)

Treasury Regulations 103, promulgated under the Internal Revenue Code:

SEC. 19.23 (a)–1. *Business expenses.*—Business expenses deductible from gross income include the ordinary and necessary expenditures directly connected with or pertaining to the taxpayer's trade or business, * * * Among the items included in business expenses are management expenses, commissions, labor, supplies incidental repairs, operating expenses of

automobiles used in the trade or business, traveling expenses while away from home solely in the pursuit of a trade or business (see Section 19.23 (a)–2), advertising and other selling expenses, together with insurance premiums against fire, storm, theft, accident, or other similar losses in the case of a business, and rental for the use of business property. * * *

SEC. 19.23 (a)–2. *Traveling expenses.*—Traveling expenses, as ordinarily understood, include railroad fares and meals and lodging. If the trip is undertaken for other than business purposes, the railroad fares are personal expenses and the meals and lodging are living expenses. If the trip is solely on business, the reasonable and necessary traveling expenses, including railroad fares, meals, and lodging, are business expenses.

(a) If, then, an individual, whose business requires him to travel, receives a salary as full compensation for his services, without reimbursement for traveling expenses, or is employed on a commission basis with no expense allowance, his traveling expenses, including the entire amount expended for meals and lodging, are deductible from gross income.

* * * * *

SEC. 19.24–1. *Personal and family expenses.*—Insurance paid on a dwelling owned and occupied by a taxpayer is a personal expense and not deductible. Premiums paid for life insurance by the insured are not deductible. In the case of a professional man who rents a property for residential purposes, but incidentally receives clients, patients, or callers there in connection with his professional work (his place of business being elsewhere), no part of the rent is deductible as a business expense. If, however, he uses part of the house for his office, such portion of the rent as is properly attributable to such office is deductible. * * *

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